



Making Dollars and Cents out of Mediation

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money non-cent\$

- Good deals lure us into buying things that don't have utility
- Winnings in gambling are often not treated as real money
- As wealth grows, each new increment of wealth has lesser impact than the last- the first \$1,000 increment is more valuable than the next \$1,000 increment, which is more valuable than the next, etc.
- Loosing or foregoing a gain is less painful than a perceived loss
- The more absorbed losses, the more risk is accepted. Horse Tracks make more money at the end of the day.
- "Making" money without a transaction (wine)
- Wanting more for my house than I would be willing to pay for the same house owned by someone else
- Opening new lines of debt when I cannot pay current debt service



the ultimatum game (Nash Equilibrium)

- The proposer has 2 options- offer to split the money fairly or unfairly and the responder can accept or reject. If the offer is rejected, then no one gets money.
 - We know that the responder should accept anything because something is better than nothing
 - Research show that most offers of less than 30% are rejected



economics

- economics is not only about money; it is the study of
 - The availability of resources
 - How people use resources
 - How people respond to incentives
 - **How people make decisions; in fact economics can explain life's big decisions**



economics and utility

- Utility- usefulness of a commodity to satisfy a human want
- Utility considers psychology, usefulness, etc.
- Economics offers elegant formulas which predict utility
 - Positive Utility of item gained less opportunity cost given up = surplus
If there is a surplus, then the transaction has utility
 - Negative Utility- If the price paid is higher than you expected to pay- then negative utility

Until economists began to recognize this is not how individuals often make decisions about money

IN CONFLICT- INCONSISTENCY BETWEEN NEEDS AND INTERESTS AND UTILITY CAN STIFLE NEGOTIATION AND LEAVE MEDIATORS BAFFLED

Causes of Conflict



Adapted from:
Christopher Moore, *The Mediation Process*, Third Edition (San Francisco: Jossey-Bass), 2003.



how does money contribute to conflict?

- Most of us have difficulty talking about money
- Individuals have different values and philosophies related to money
- There are strong emotions and symbolism attached to money in relationship
- People have different stories or narratives they tell themselves about money
- Individuals have patterns related to money
- Inequity in resources, control and authority over money feeds competition
 - Sometimes it is a real question of demand for limited resources
- Individuals have different abilities to understand and process money decisions and sometimes their ability to make rational choices is impaired
- Individuals don't always have the same information concerning a money decision

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we are not comfortable talking about money

- Wells Fargo study- 44% of us see money as the most challenging topic to discuss with others
- Lauren Papp, a psychologist and professor at the University of Wisconsin, Madison, conducted [a study of 100 married couples](#) who kept diary entries about their arguments. During the 15-day period of the study, the spouses reported squabbling more about money than other issues — for example, the kids or household chores.
- 2010 APA study found that 76% of Americans see money as a source of stress in their lives



development of beliefs, values
and philosophies regarding
money

where do we get our values and philosophies about money?

- hard wiring (nature v. nurture)
- Marshmallow Test
 - Patience and Self-control is a predictor of future success
- Recent research indicates the Marshmallow test

Was flawed because it failed to recognize socio-Economic level



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Where do we get our values and philosophies about money

- Economics affects Parenting and Parenting Styles
- Research shows children gain financial literacy through their parents
- Children imitate the financial behaviors of their parents (Jorgensen, Rappleyea, Schweichler, Fang, & Moran, 2017; Shim et al., 2010; Webley & Nyhus, 2006).
- When parents save, paid bills on time, and avoided unnecessary debt, emerging adults were more likely to avoid unnecessary debt, limit spending, stick to a budget (Hibbert, Beutler, & Martin, 2004)

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Continued

- Generational differences – Baby boomers, Gen-X, Millennials.
- Cultural- many minorities distrust banks
- Intentional change -Money or Financial Trauma from life events affecting the individual
- 2013 study showed that poverty hurts ability to make decisions –imposes a mental burden causing loss equivalent of 13 IQ points and reduces long-term thinking

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relationships, structure, and
money



what money means in relationship

- Money represents different things
 - Social Parity
 - Love
 - Power and Status
 - Success
 - Self-control
 - Security
 - Freedom
 - Relief from Guilt or shame

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how structure affects money decision

- Families have either a “committee” that makes financial decisions based on utility or a power structure that dictates the decision



narratives regarding money-profiles

- Money Avoidance: Someone who avoids dealing with their money while also avoiding responsibility or discussing money because it is inherently bad or evil. Likely to give into their fears and anxiety and may even underspend or give money away
- Money Worship: Someone who believes if they had more money they would be happier and their problems would be solved. They need to spend money to show others their love and they may work too much or hoard. They also avoid responsibility
- Money Status: Someone who equates net worth with their self-worth. Money gives them status and they are often will to take risks



stress, anxiety and money decisions



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- Individuals have different levels of financial competency
 - Individuals may make financial decisions based on instincts
 - Behavioral Economics (Daniel Kahneman, 2002 Nobel Prize) – Thinking Fast and Slow

Reflective System –Slow deliberate thought

Automatic System –Instinctive/Reactive

This triggers the use of heuristics and/or triggers cognitive bias

DECISIONS IN OTHER AREAS OF LIFE not reflective of DECISIONS WITH MONEY

- Dan Geller, Money Anxiety, when money anxiety increases, people default to making instinctive or automatic, as opposed to reactive financial decision-making




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common cognitive bias affecting financial decisions

- Endowment
- Sunk costs
- Loss aversion
- Gambler's illusion

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data and framing

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- People have different abilities to process financial decisions and different levels of financial literacy
 - People make financial decisions on how the decision is framed
 - Positive or negative language can skew what would be an otherwise rational choice
 - Same thing applies to how you lay out or portray the math
 - Therefore, how you frame something may affect another person's ability to understand it or process it

framing the math

Two shareholders – Equal Ownership

Cash				\$ 75,000.00
Amount Due from Shareholder 2				\$ 5,000.00
Inventory				\$ 110,000.00
Automobile-Shareholder 2				\$ 35,000.00
Assets				\$ 225,000.00
Vender Accounts Payable				\$ 25,000.00
Shareholders Equity				\$ 200,000.00

The way many lawyers would process the math:

					Amount to	
					<u>Shareholder Two</u>	
		Shareholder's Value			\$ 100,000.00	
		Less Car			\$ (35,000.00)	
		Less Receivable			\$ (5,000.00)	
		Cash to pay			\$ 60,000.00	

How the parties expect to see:

				Balance	Shareholder	Shareholder
				Sheet	One	Two
Cash				\$ 75,000.00	\$ 37,500.00	\$ 37,500.00
Amount Due from Shareholder 2				\$ 5,000.00	\$ 2,500.00	\$ 2,500.00
Inventory				\$ 110,000.00	\$ 55,000.00	\$ 55,000.00
Automobile-Shareholder 2				\$ 35,000.00	\$ 17,500.00	\$ 17,500.00
Assets				\$ 225,000.00	\$ 112,500.00	\$ 112,500.00
Vender Accounts Payable				\$ 25,000.00	\$ 12,500.00	\$ 12,500.00
Shareholders Equity				\$ 200,000.00	\$ 100,000.00	\$ 100,000.00



					Shareholder	Shareholder
					<u>One</u>	<u>Two</u>
Cash					\$ 50,000.00	\$ 25,000.00
Amount due from Shareholder 2						\$ 5,000.00
Inventory					\$ 110,000.00	\$ -
Automobile						\$ 35,000.00
Accounts Payable					\$ (25,000.00)	
					\$ 135,000.00	\$ 65,000.00
Cash payment to Shareholder 2					\$ (35,000.00)	\$ 35,000.00
					\$ 100,000.00	\$ 100,000.00



				Shareholder	Shareholder
				<u>One</u>	<u>Two</u>
Cash				\$ 37,500.00	\$ 37,500.00
Amount due from Shareholder 2					\$ 5,000.00
				\$ 2,500.00	\$ (2,500.00)
Inventory				\$ 110,000.00	
				\$ (55,000.00)	\$ 55,000.00
Autmobile					\$ 35,000.00
				\$ 17,500.00	\$ (17,500.00)
Accounts Payable				\$ (25,000.00)	
				\$ 12,500.00	\$ (12,500.00)
				<u>\$ 100,000.00</u>	<u>\$ 100,000.00</u>
<u>Summary of Distribution</u>					
		Cash		\$ 15,000.00	\$ 60,000.00
		Receivable			\$ 5,000.00
		Assets		\$ 110,000.00	\$ 35,000.00
		Liabilities		\$ (25,000.00)	\$ -
				\$ 100,000.00	\$ 100,000.00



how can we help parties make decisions involving money?

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DON'T BE AFRAID TO TALK ABOUT MONEY HONESTLY AND DIRECTLY

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the basics- understand who the individual is

- Social Economic & Culture background
- Consider the Relationship involved- how were/are decisions made
- Symbolism
 - What does the money or settlement mean to them
 - See if they can name the emotion attached to the dollar value
- Find out if they are comfortable with the information and processing the math?
- How do they think about and process decisions about money?
- Understand their rules of thumb
- Ask questions to understand the story they tell themselves about money

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recognize, anticipate and respond to what humans have limited ability to do

- Predict how their choice will wind up affecting them in life, particularly when consequences are in the future
- Choose between multiple complex options
- Gain experience, practice or feedback, to make rare or difficult decisions
- Know their preferences, needs and wants when presented something unfamiliar
- To avoid impulse for immediate gratification– tendency to get benefits now and deal with costs later

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help them think with their reflective brain rather than their instinctive/reactive brain

- Acknowledge and normalize feelings of anxiety about money decisions
- Ask them if they have rules of thumb they use to make decisions about money that they are considering in your situation
- Look for intractable patterns in how they process the information or decision and address those pattern
- Have them explain how they are coming up with their answer
- Get them to slow down
- Process decision in ways that require use of the Reflective brain
 - List what they want and both prioritize and weight
 - Are there compatible goals, needs and interests

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using heuristics to your advantage - create rules of thumb

- Simplify information or group information (people remember information in chunks better, like SSN number or food pyramid). Create a simple manageable set of choices.
- Find a friendly or simple context to improve their ability to understand the figures
- Format of information influences judgment and decision-making more than substantive information (People pay more attention to the idea of Fidelity green line than they do if Fidelity gave an in depth description of how their personal financial planning services help customers)

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debunk heuristics and cognitive bias

- Loss aversion – challenge them to be realistic about losses
- Rule of 72 (divide 72 by the percent of interest rate to determine the approximate amount of time it takes to double your money in an investment) or 10 year rule(money doubles every 10 years) - which is **not** necessarily correct

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nudges

- Is a positive incentive or a change in the environment that encourages a choice
- Idea is to exploit cognitive bias to push an individual towards a decision- Thaler promoted them because seen as the middle road- i.e. influencing choice without coercing choice

Interactional Nudges

Language Nudges



using nudges to overcome bias

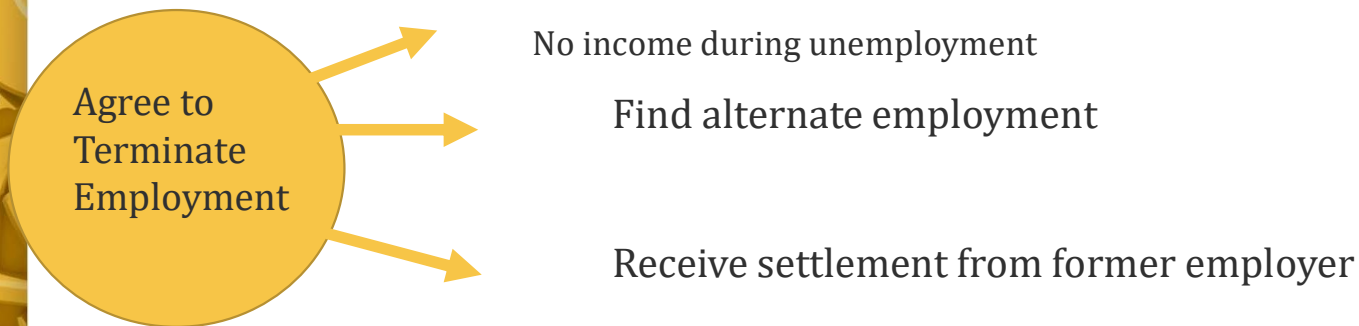
Incentives can be helpful and can also backfire


- Extrinsic Incentives work –like paying for work. However, can be counterproductive if amount is too little or too much
- Intrinsic Incentive- which connect with self
- Social Incentives-People tend to look at what others are doing so something like a fine can reflect social disapproval. [If I know someone needs the money, I am more likely to give them more than if I don't know that information.]
- Signaling – good example is that consumers often see highly advertised brands as being high quality

MAPPING CHOICES

Map from choice to outcome/welfare for the individual

- Learn from the past- Collect historical information that “recaps” performance and outcomes
- Examine the future-Help the individual map actions and possible outcomes for the future by writing them down (i.e. if I take X action, what are the possible outcomes/benefits/costs for me)
- Build in recaps or performance reporting that helps to avoid future disputes in on-going relationships and increases rational decision making



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- Default – The automatic option; option if the individual does nothing. It may be helpful in an agreement to consider or even negotiate what will happen if the individual does nothing.
 - opt in/ or opt out choices- example retirement contributions
 - Forcing Function- for the individual to get what he wants, he has to do something first. Note: This is something attorneys are accustomed to doing in agreements- where performance or satisfaction of an obligation is conditioned upon the other party taking an action. The same thing can be applied in negotiation when you ask someone to make a concession or acknowledge something in order to receive something they want from the settlement.
 - Structure complex choices
 - Identify criteria for decision
 - Decision trees- to create steps in decision making
 - List and weight choices to build a criteria for choice



framing the financial issues

Consider both

WORDS

and

How you present numbers



MANY THANKS TO ALL!